

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.1032 of 2000
Date of decision:27.10.2006

Chandra Shubh Yatra Company Limited and another

....Petitioners

versus

The State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Puneet Bali, Advocate, for the petitioners.
Ms. Ritu Bahri, DAG, Haryana.

JUDGMENT:

This writ petition seeks quashing of the Haryana Motor Vehicles (Fifth Amendment) Rules 1999 (for short, 'the 1999 Rules') published vide notification dated 29.12.1999, Annexure P.5, to the extent of inclusion of officers of the Haryana Roadways to exercise powers under Rules 226/226-A/226-B/226-C of the 1999 Rules; quashing of First Proviso to Rule 226-B of the 1999 Rules for not providing grant of opportunity of 15 days before temporary seizure/detention of vehicles as per Section 130(3) of the Motor Vehicles Act, 1988 (for short, the 1988 Act'); direction that the vehicles of the petitioners be detained only after following procedure under Rule 226-B of the 1999 Rules and Section 130(3) of the 1988 Act; direction to lay down procedure for seizure and retention of vehicles under section 207(1) of the 1988 Act and not to impound the vehicles without such procedure; direction that respondent Nos. 5 to 8 may not impound the vehicles of the petitioners in contravention of the provisions of sections 207(1) read with section 2(32) of the 1988 Act.

Case of the petitioners is that petitioner No.1 is a company registered under the Companies Act, 1956, while petitioner No.2 is its Managing Director. Petitioner No.1 is engaged in the running of luxury tourist buses. It holds tourist permits/contract carriage of four buses under

section 88(a) of the 1988 Act. The buses coming from Rajasthan cross the border of Haryana at Dabwali and Balsamand between 12 O'clock at night and 4 AM but when the said buses arrive at Hisar or Sirsa, the same are impounded and challaned on one pretext or the other. Prior to 29.12.1999, no procedure was laid down for detaining of vehicles under section 207 of the Act but on 29.12.1999, rules have been framed authorising certain officers for detaining/challaning/releasing the vehicles. Relevant provisions of Rules 226, 226-A, 226-B and 226-C of the Haryana Motor Vehicles Rules, 1993 were substituted by the Haryana Motor Vehicles (Fifth Amendment) Rules, 1999. Bus of the petitioners being RJ-13/P/1575 was impounded on 21.1.2000 at 1 AM and in the receipt of challan, it was mentioned that the vehicle was being plied without documents. The vehicle was released by the Court of Additional Chief Judicial Magistrate, Hisar on superdari but inspite of the order for release of the vehicle, the same was not released by the authorities. Notification dated 29.12.1999 was violative of Articles 14, 19(1)(g) and 21 of the Constitution and inaction in regulating method of seizure under section 207(1) of the Act is also arbitrary and violative of the provisions of Section 130(3) of the Act.

In the reply filed, it is stated that the vehicles are challaned or impounded in accordance with law; procedure for detention of vehicles is laid down in Annexures R.1 and R.2, which are valid.

On 2.6.2000, following interim order was passed:-

“After hearing learned counsel for the parties, we direct that the vehicles of the petitioners shall not be impounded except when it is clearly established that the permit granted by the competent authority is being misused by the petitioners. For this purpose, the concerned authority shall give 24 hours' notice to the petitioners and then take action for impounding of the vehicles.”

An additional affidavit has been filed by Shri M.K.Mahajan, Additional State Transport Controller on 16.10.2006 to the effect that vide notification dated 29.10.2003, Haryana Motor Vehicles (Fourth Amendment) 2003 (for short, 'the 2003 Rules') were notified. Rules 225 and 226 have been substituted while Rules 226-A, 226-B and 226-C have been omitted. Stand of the respondents is that after amendment of rules,

contentions raised in the original writ petition do not survive. The substituted rules are:

“225. Officers of Motor Vehicles Department appointed under section 213.-(1) The following officers are appointed as officers of the Motor Vehicles Department under section 213 of the Act, namely:-

- (i) State Transport Controller;
- (ii) Additional/Joint State Transport Controller,
- (iii) Additional / Joint Excise and Taxation Commissioner.
- (iv) Senior Superintendent of Police, Haryana Highway Patrol and Road Safety;
- (v) Secretary, State/Regional Transport Authority;
- (vi) District Transport Officer;
- (vii) Flying Squad Officer;
- (viii) Deputy Superintendent of Police, Haryana Highway Patrol and Road Safety;
- (ix) Assistant District Transport Officer;
- (x) Assistant Excise and Taxation Officer;
- (xi) Incharge, Traffic Aid Centres, Haryana Highway Patrol and Road Safety not below the rank of Sub-Inspector.

(2) Besides the officers appointed under sub-rule (1), the following officers shall also be deemed to be appointed as officers of the Motor Vehicles Department, namely;-

- (i) Deputy Commissioners;
- (ii) Additional Deputy Commissioners;
- (iii) Sub-Divisional Officers (Civil);
- (iv) City Magistrates;
- (v) General Managers, Haryana Roadways; and
- (vi) Traffic Managers, Haryana Roadways.

226. Powers of officers of Motor Vehicles Department.- (1) State Transport Controller and subject to his regulatory control all other officers of the Motor Vehicles Department specified in the foregoing rule shall within the area of their respective jurisdiction, have the power to challan any person for contravention of any provisions of the Act or of any rule, regulation or notification issued thereunder;

Provided that the General Managers and Traffic Managers of Haryana Roadways shall have no powers to check/challan goods vehicles and buses of Private Operators both of contract and Stage Carriage Permits;

Provided further that Incharge, Traffic Aid Centres, Haryana Highway Patrol and Road Safety shall

exercise such powers only in respect of offences punishable under sections 183, 184, 185, 190 and 197 of the Act.

(2) An officer of the Motor Vehicles Department shall have the power, -

- (a) in order to ascertain whether the provisions of the Act are being observed to,-
 - (i) to make such examination and enquiry as he thinks fit;
 - (ii) to signal any motor vehicle being driven in any public place to stop (whereupon such vehicle shall be stopped by the person driving or having control of the vehicle) and demand of search for, if not produced, driving licence, certificate of registration, certificate of issuance, and in case of a transport vehicle, in addition certificate of fitness and permit, examine them and seize one or more of them, as may be necessary, for the purpose of verification or where the holder is charged with an offence under the Act for forcing his attendance in the court taking cognizance of the offence, after giving receipt therefor;
- (b) with such assistance, if any, as he thinks fit, to enter, inspect and search any premises which is in the occupation of a person who, he has reason to believe, has committed an offence under the Act or in which a motor vehicle in respect of which such offence has been committed is kept:

Provided that,-

- (i) any search without a warrant shall be made only by a Gazetted Officer;
- (ii) where the offence is punishable with fine only the search shall not be made after sunset and before sunrise;
- (iii) where the search is made without a warrant, the Gazetted Officer concerned shall record in writing the grounds for not obtaining a warrant and report to his

immediate superior that such search has been made;

- (c) to examine any person and require the production of any register or other document maintained in pursuance of the Act, and take on the spot or otherwise statements of any person which he may consider necessary for carrying out the purposes of the Act;
- (d) to seize or take copies of any registers or documents or portions thereof as he may consider relevant in respect of an offence under the Act which he has reason to believe has been committed.
- (e) to launch prosecution in respect of any offence under the Act and to take a bond for ensuring the attendance of the offender before any court:

Provided that no person shall be compelled under this sub-rule to answer any question or make any statement tending to incriminate himself.

Note – For the purpose of this sub-rule, any reference to 'Act' includes reference to any rule, regulation, notification or order made under the Act.

(3) The provisions of the Code of Criminal Procedure, 1973 (Act 2 of 1974) shall, so far as may be, apply to any search or seizure under this rule as they apply to any search or seizure under the authority of any warrant issued under section 94 of the said Code.

(4) subject to the restrictions imposed under the first proviso to sub-rule (1), the officers mentioned in sub-rule (1), are authorised to exercise powers given under sub-section (1) of sub-section (2) of section 206 of the Act.

(5) Subject to the restrictions imposed under the first proviso to sub-rule (1), the officers mentioned in sub-rule (1), are authorised to exercise powers given under sub-section (1) of section 207 of the Act to seize and detain a motor vehicle for the reasons and in the circumstances mentioned therein:

Provided that -

- (i) the detaining officer, shall direct the incharge of the vehicle to take or cause to take the said vehicle to the nearest police station, workshop of the Haryana Roadways or any other place which is considered to be safe for the temporary custody of the vehicle;

- (ii) the detaining officer will further ensure proper receipt of the vehicle from the incharge of the premises in Form HR No.49 where the vehicle has been ordered to be impounded. A copy of the receipt shall be handed over by the person incharge of the premises to the owner or representative of the vehicle and one copy will be given to the detaining officer;
- (iii) the incharge of the premises will be fully responsible for the safe custody of the vehicle, till it is released on the orders of the competent authority or is disposed of otherwise in terms of these rules;
- (iv) in case the vehicle remains impounded for more than one month in the premises other than the police station, the vehicle may be sent by the Incharge of the premises to the nearest police station under intimation to the owner of the vehicle. The Officer Incharge of police station may take further action for the disposal of the vehicle according to law.

(6) Subject to the restrictions imposed under the first proviso to sub-rule (1), all class I officers mentioned in sub-rule (1) are authorised to exercise powers given under sub-section (2) of the section 207 of the Act. Any officer below the rank of a District Transport Officer seizing or detaining any motor vehicle under sub section (1) of section 207 shall send immediately and not later than 24 hours of detaining the vehicle, report of the case together with copy of the relevant documents to the District Transport Officer concerned who may on application of the owner or person incharge of the vehicle, order release of the vehicle in accordance with the provisions of sub-section (2) of section 207 of the Act.”

It has been further stated in the affidavit that in accordance with the interim direction of the court, instructions were issued to all the District Transport Officers vide letter dated 25.10.2001, Annexures R.2 and R.3 requiring 24 hours notice to be given to the unauthorised operators violating conditions of permit before a bus was impounded; in a separate register details of offences, particulars of vehicles and name and address of the owner should be entered; reasons on which the DTOs were satisfied for the alleged violation should also be mentioned and weekly information report be sent by DTOs to the Headquarter of the vehicles which were

challaned.

It is further stated that on account of interim order, whenever there is any violation and no document is shown, the power of impounding could not be exercised and requirement of giving 24 hours prior notice before impounding a vehicle will seriously impair checking of violations of provisions of the Act.

From the various contentions raised by the parties during the course of arguments, following questions arise for consideration:-

- (i) Whether inclusion of officers of Haryana Roadways to exercise powers of challaning and detaining vehicles was permissible?
- (ii) Whether temporary seizure/detention of vehicles as per provisions of Section 207 of the 1988 Act was permissible?
- (iii) Whether exercise of power under section 207 of the 1988 Act was required to be regulated by judicial order?

Before considering the above questions, it may be worth-while to reproduce the relevant statutory provisions:-

“130. **Duty to produce licence and certificate of registration.**—(1) The driver of a motor vehicle in any public place shall, on demand by any police officer in uniform, produce his licence for examination:

Provided that the driver may, if his licence has been submitted to, or has been seized by, any officer or authority under this or any other Act, produce in lieu of the licence a receipt or other acknowledgement issued by such officer or authority in respect thereof and thereafter produce the licence within such period, in such manner as the Central Government may prescribe to the police officer making the demand.

- (2) The conductor, if any, of a motor vehicle in any public place shall on demand by any officer of the Motor Vehicles Department authorised in this behalf, produce the licence for examination.]

- (3) The owner of a motor vehicle (other than a vehicle registered under Section 60), or in his absence the driver or other person in charge of the vehicle, shall, on demand by a registering authority or any other officer of the Motor Vehicles Department duly authorised in this behalf, produce the certificate of insurance of the vehicle and, where the vehicle is a transport vehicle, also the certificate of fitness referred to in Section 56 and the permit; and if any or all of the certificates or the permit are not in his possession, he shall, within fifteen days from the date of demand, submit photo copies of the same, duly attested in person or send the same by registered post to the officer who demanded it.

Explanation.—For the purposes of this sub-section, “certificate of insurance” means the certificate issued under sub-section (3) of Section 147.]

- (4) If the licence referred to in sub-section (2) or the certificates or permit referred to in sub-section (3), as the case may be, are not at the time in the possession of the person to whom demand is made, it shall be a sufficient compliance with this section if such person produces the licence or certificates or permit within such period in such manner as the Central Government may prescribe, to the police officer or authority making the demand:

Provided that, except to such extent and with such modifications as may be prescribed, the provisions of this sub-section shall not apply to any person required to produce the certificate of registration or the certificate of fitness of a transport vehicle.”

- “207. **Power to detain vehicles used without certificate of registration permit, etc.** - (1) Any police officer or other person authorised in this behalf by the State Government, may if he has reason to believe that a motor vehicle has been or is being used in contravention of the provisions of section 3 or Section 4 or Section 39 or without the permit required by sub-section (1) of Section 66 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, seize and detain the vehicle, in the prescribed manner and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle:

Provided that where any such officer or person has reason to believe that a motor vehicle has been or is

being used in contravention of section 3 or Section 4 or without the permit required by sub-section (1) of section 66 he may, instead of seizing the vehicle, seize the certificate of registration of the vehicle and shall issue an acknowledgment in respect thereof.

- (2) Where a motor vehicle has been seized and detained under sub-section (1), the owner or person in charge of the motor vehicle may apply to the transport authority or any officer authorised in this behalf by the State Government together with the relevant documents for the release of the vehicle and such authority or officer may, after verification of such documents, by order release the vehicle subject to such conditions as the authority or officer may deem fit to impose.”

“213(1) **Appointment of motor vehicles officers.**—(1) The State Government may, for the purpose of carrying into effect the provisions of this Act, establish a Motor Vehicles Department and appoint as officers thereof such persons as it thinks fit.”

“Rule 139. **Production of licence and certificate of registration.**—The driver or conductor of a motor vehicle shall produce certificate of registration, insurance, fitness and permit, the driving licence and any other relevant documents on demand by any police officer in uniform or any other officer authorized by the State Government in this behalf, and if any or all of the documents are not in his possession, he shall produce in person an extract or extracts of the documents duly attested by any police officer or by any other officer or send it to the officer who demanded the documents by registered post within 15 days from the date of demand.”

Re:Q.No.(i)

In **M/s. Krishna Bus Service Private Limited v. The State of Haryana and others**, AIR 1985 SC 1651, the Hon'ble Supreme Court observed:-

- “10. The powers of stopping the motor vehicles and the powers of inspection, search, seizure and detention exercised under the Act are serious restrictions on the fundamental right of the operators of motor vehicles guaranteed under Article 19(1)(g) of the Constitution. These powers can be considered as reasonable restrictions only when they are exercised properly in the interests of the general public. They should be

reasonable both from the substantive as well as the procedural standpoint. Such powers should, therefore, be entrusted to a person who is expected to exercise them fairly and without bias. The General Manager of Haryana roadways who is a rival in business to the private operators of motor vehicles in the state and is intimately connected with the running of motor vehicles cannot be expected to discharge his duties in a fair and reasonable manner. An unobstructed operation of the motor vehicles by private owners operating along the same route or routes would naturally affect the earnings of the Haryana Roadways. There is, therefore, every likelihood of his being over-zealous in discharging his duties of stopping a vehicle and in searching, seizing and detaining motor vehicles belonging to others and at the same time excessively lenient in the case of vehicles belonging to his own department. If in discharging his duties in the case of vehicles belonging to others he fails to give due regard to the interests of the owners thereof he would be violating their fundamental right to carry on business in a reasonable way. If he is too lenient in inspecting the vehicles belonging to his own department, the interests of the travelling public at large would be in peril. In both the cases there is a conflict between his duty on the one hand and his interest on the other. Moreover administration must be rooted in confidence and that confidence is destroyed when people begin to think that the officer concerned is biased. This is not a case which is governed by the rule of necessity. As it is, there are many other officers who are entrusted with the powers of the police officers under the act. There was, therefore, no necessity to appoint the General Manager of Haryana Roadways also to exercise the said powers. We are, therefore, of the opinion that the appointment of the General Manager, Haryana Roadways who is directly responsible for running its motor vehicles as one of the officers who can exercise the powers of a Deputy superintendent of Police under the Act imposes an unreasonable restriction on the fundamental right of the private motor vehicles operators and is therefore violative of Article 19(1)(g) of the Constitution. We, however, make it clear that the appointment of other officers of the state Govt. is not bad even though the Government is the owner of the vehicles as their connection with the running of the vehicles is too remote. The appointment of the General Manager as an officer who can exercise the powers of the Deputy Superintendent of Police under the Act is also not in the interests of the general public since the large

number of motor vehicles owned by the Haryana Roadways would not be subject to inspection and checking by an independent agency. Can we expect a fair investigation by a police officer into a criminal case in which his own kith and kin are involved as the accused? The position is not different in this case. The Legislature could not have intended while enacting Section 133-A of the Act that a person who was himself directly responsible for the proper running of the motor vehicles according to law could be appointed as the inspecting and investigating officer by the State Government for the purpose of enforcing the Act.”

The above observations were reiterated by the Hon'ble Supreme Court in **Ishwar Singh Bagga and others v. State of Rajasthan**, AIR 1987 SC 628, . It was observed:-

“8.....If the Central legislature intended that such powers could be entrusted to private persons or employees of any statutory Corporation the section would have expressly provided in that regard. Ordinarily, whenever a statute empowers the State Government to appoint persons to administer any of the provisions of the statute, the persons who may be appointed by the State Government under such provision can only be persons appointed in connection with the affairs of the State. In other words they should be employees or officers of the State Government, who are subject to the administrative and disciplinary control of the State Government directly. The powers of search, seizure and detention of vehicles belonging to private parties and of launching prosecutions are incidental to the sovereign powers of the State and they cannot ordinarily be entrusted to private persons unless the statute concerned makes express provisions in that regard. It is a different matter if a private person on his own files a complaint before a Magistrate and wishes to establish a criminal charge. In such a case the private person would not be investigating into the crime with the aid of the powers of search, seizure or detention. The Magistrate may, if he so desires, direct a police officer to investigate into the allegations and report to him. In order to illustrate the above point reference may be made to Section 43 of the Code of Criminal Procedure, 1973. It provides that any private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence, or any proclaimed offender,

and, without unnecessary delay, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station. We are of the view that the expression “other person” mentioned in Section 129-A of the Act which has to be read ejusdem generis with the words “any police officer” which precede that expression in Section 129-A of the Act can only refer to an officer of the government and not to any officer or employee of any statutory Corporation or to any other private person.....”

- “10. It may be that the Corporation is established by the government with the capital contributed by the Central Government or the State Government and it may also be that for the purposes of Part III of the Constitution the Corporation is treated as “a State”. Nevertheless the officers of the Corporation cannot be treated as persons falling within the meaning of the expression “other persons” in Section 129 or Section 129-A of the Act, even though some of them may be officers deputed by the State Government to work as the officers and servants of the Corporation. In view of the foregoing we hold that the Deputy General Manager (Traffic), the Assistant Depot Managers and the Traffic Inspectors of the Corporation could not have been authorised by the State Government to discharge the powers under Section 129-A of the Act. The impugned notification has to fail on this account only. We also hold that the reasons given in support of the decision in Krishna Bus Service case (AIR 1985 SC 1651) are equally applicable to this case also.
11. It was argued that on account of unauthorised use of motor vehicles as stage carriages or contract carriages on the notified routes over which the Corporation has got exclusive right to operate its vehicles, the Corporation is losing a large amount of revenue and therefore it was necessary to empower the officers of the Corporation to exercise the powers under Section 129-A of the Act. We do not find it as a satisfactory ground to uphold the impugned notification. The police officers and the officers of the Motor Vehicles Department are expected to discharge their duties properly and diligently and if they discharge their duties in accordance with law with the amount of diligence which is required of them, there should be no difficulty in plugging any kind of unauthorised running of stage carriages or contract carriages on the notified routes. We have to

impress upon the police officers and the officers of the Motor Vehicles Department of the State of Rajasthan not to allow the confidence vested in them to be eroded. We hope and trust that they would discharge the duties to be performed by them strictly and ensure that the provisions of the Act are obeyed by the motor vehicle operators.”

In view of the above, the powers to detain vehicles could not be given to General Manager of Haryana Roadways. However, since under the 2003 Rules, conferment of powers to General Managers of Haryana Roadways has been specifically deleted under First Proviso to Rule 226(1), though the said officers have been appointed as officers of Motor Vehicles Department, the question has become academic.

Even though, the State of Punjab and UT Chandigarh have also been made parties, there is no allegation that the officers of Roadways were given powers to check or detain vehicles.

Re:Q.Nos.(ii) & (iii)

We may notice that power of detaining vehicle in the situations specified in the Statute has been upheld in the context of Section 129-A of the 1939 Act which was in *pari materia* to the provisions of Section 207, in The **Transport Commissioner, Andhra Pradesh, Hyderabad and another v. S.Sardar Ali and others**, AIR 1983 SC 1225. Reference may also be made to the judgment of the Karnataka High Court in **M.S.Palaksha and another v. Union of India and others**, AIR 1996 Karnataka 209. In view of judgment of the Hon'ble Supreme Court in **S.Sardar Ali's** case (supra), conferment of power to detain a vehicle has been found to be necessary in public interest to check violation of law. It is well-settled that possibility of abuse of a provision is not a ground to set aside conferment of such power. Such power is, however, required to be exercised properly in the interest of general public. Abuse of such power is open to question and is liable to be set aside, if established. Reference may be made to judgments of the Hon'ble Supreme Court in **A.Thangal Kunju Musaliar v. M.Venkatachalam Potti**, AIR 1956 SC 246, **Chinta Lingam and others v. The Govt. of India and others**, AIR 1971 SC 474, **DK Trivedi and**

Sons and others etc. v. State of Gujarat and others etc., AIR 1986 SC 1323, **Mafatlal Industries Limited and others v. Union of India and others**, (1997) 5 SCC 536), **Union of India and others v. Harjeet Singh Sandhu**, AIR 2001 SC 1772, **Sushil Kumar Sharma v. Union of India and others**, AIR 2005 SC 3100, **Budhan Choudhary v. State of Bihar**, AIR 1955 SC 191, **The State of Punjab and another v. Khan Chand**, AIR 1974 SC 543 and **Shiv Sagar Tiwari v. Union of India and others**, AIR 1997 SC 2725).

In **Sushil Kumar Sharma's** case (supra), the Hon'ble Supreme Court was concerned with validity of Section 498-A IPC on the ground that the said provision was being misused. The High Court of Delhi issued directions in general terms. Dealing with the question, it was observed:-

“11. It is well settled that mere possibility of abuse of a provision of law does not per se invalidate a legislation. It must be presumed, unless the contrary is proved, that administration and application of a particular law would be done “not with an evil eye and unequal hand”. (See: A. Thangal Kunju Musaliar v. M. Venkatachalam Potti, Authorised Official and Income tax Officer and another) AIR 1956 SC 246).

12. In **Budhan Choudhry and others v. State of Bihar** (AIR 1955 SC 191) a contention was raised that a provision of law may not be discriminatory but it may lend itself to abuse bringing about discrimination between the persons similarly situated. This Court repelled the contention holding that on the possibility of abuse of a provision by the authority, the legislation may not be held arbitrary or discriminatory and violative of Article 14 of the Constitution.

13. From the decided cases in India as well as in the United States of America, the principle appears to be well settled that if a statutory provision is otherwise intra vires, constitutional and valid, mere possibility of abuse of power in a given case would not make it objectionable, ultra vires or unconstitutional. In such cases, “action” and not the “section” may be vulnerable. If it is so, the court by upholding the provision of law, may still set aside the action, order or decision and grant appropriate relief to the person aggrieved.

14. In **Mafatlal Industries Limited and others v. Union of India and others**, (1997) 5 SCC 536) a Bench of nine Judges observed that mere possibility of abuse of a provision by those in charge of administering it cannot be a ground for holding a provision procedurally or substantively unreasonable. In **Collector of Customs v. Nathella Sampathu Chetty** (1962) 3 SCR 786), this Court

observed:

“The possibility of abuse of a statute otherwise valid does not impart to it any element of invalidity.”

It was said in *State of Rajasthan v. Union of India*, AIR 1977 SC 1361):

“It must be remembered that merely because power may sometime be abused, it is no ground for denying the existence of power. The wisdom of man has not yet been able to conceive of a Government with power sufficient to answer all its legitimate needs and at the same time incapable of mischief.”

(Also see *Commissioner HRE v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Meth*, (AIR 1954 SC 282).

15. As observed in *Maulavi Hussien Hazi Abraham Umarji v. State of Gujarat*, AIR 2004 SC 3946, *Unique Butle Tube Industries (P) Limited v. UP Financial Corporation and others*, AIR 2003 SC 2103 and *Padma Sundara Rago (dead) and others v. State of TN and others*, AIR 2002 SC 1334, while interpreting a provision, the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of the process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary.

16. The judgment of the Delhi High Court on which reliance was made was rendered in the case of *Savitri Devi v. Ramesh Chand and others*, 2003 CrLJ 2759. In that case while holding that the allegations regarding commission of offence punishable under Section 498-A IPC were not made out, certain observations in general terms were made about the need for legislative changes. The complainant had moved this Court against the judgment on merits in SLP (CrL) ... of 2003 entitled *Savitri Devi v. Ramesh Chand*, 2003 CrLJ 2759. By order dated 28-11-2003 this Court observed as follows:

“Heard learned counsel for the petitioner.
Delay condoned.

We do not see any merit in the challenge made to the order of the High Court in Criminal Revision No. 462 of 2002, on the facts of the case. The special leave petition is, therefore, dismissed.

At the same time, we express our disapproval of some of the generalised views expressed in paras 23 to 32 of the judgment of the High Court by the learned Single Judge. The learned Judge ought to have seen that such observations, though may be appropriate for seminars or workshops, should have been avoided being incorporated as part of a court judgment. Some of the views also touch upon legislative measures and wisdom of legislative policy in substance, which

according to the learned Judge need to be taken into account. There was no scope for considering all such matters in the case which was before the learned Judge. It is, therefore, appropriate that such generalised observations or views should be meticulously avoided by courts in the judgments.”

17. Above being the position we find no substance in the plea that Section 498-A has no legal or constitutional foundation.

18. The object of the provision is prevention of the dowry menace. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreak personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the courts have to take care of the situation within the existing framework. As noted above the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used as a shield and not as an assassin's weapon. If the cry of “wolf” is made too often as a prank, assistance and protection may not be available when the actual “wolf” appears. There is no question of the investigating agency and courts casually dealing with the allegations. They cannot follow any straitjacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that the ultimate objective of every legal system is to arrive at the truth, punish the guilty and protect the innocent. There is no scope for any preconceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the courts start with the presumptions that the accused persons are guilty and that the complainant is speaking the truth. This is too wide and generalised a statement. Certain statutory presumptions are drawn which again are rebuttable. It is to be noted that the role of the investigating agencies and the courts is that of a watchdog and not of a bloodhound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally undisputable that in many cases no direct evidence is available and the courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view.”

In M/s. Krishna Bus Service's case (supra) seriousness of the restriction involved in exercise of power of detaining a vehicle was noticed and it was observed that such power could be exercised in the interest of

general public and exercise of power should be reasonable both in substantive as well as procedural standpoint.

This court considered the exercise of power of seizure and detention of goods under the Customs Act, 1962 in CWP No.6022 of 2005 (**M/s. Mapsa Tapes Private Limited and another v. Union of India and others**), decided on 28.4.2006. Dealing with the question, it was observed:-

“It is well-settled that power of search and seizure has to be conceded in the larger interest of the society and to check evasion of tax. The same has been upheld by the Hon'ble Supreme Court in **MP Sharma v. Satish**, AIR 1954 SC 300. It was observed at pages 306-307: “A power of search and seizure is in any system of jurisprudence an overriding power of the state for the protection of social security and that power is necessarily regulated by law. When the Constitution makers have thought fit not to subject such regulation to constitutional limitations by recognition of a fundamental right to privacy, analogous to the American Fourth Amendment, we have no justification to import it, into a totally different fundamental right, by some process of strained construction. Nor is it legitimate to assume that the constitutional protection under Art.20(3) would be defeated by the statutory provisions for searches.”

At page 302 of the said judgment, it was observed:

“A search and seizure is, therefore, only a temporary interference with the right to hold the premises searched and the articles seized. Statutory regulation in this behalf is necessary and reasonable restriction cannot per se be considered to be unconstitutional. The damage, if any, caused by such temporary interference if found to be in excess of legal authority is a matter for redress in other proceedings. We are unable to see how any question of violation of Art. 19 (1) (f) is involved in this case in respect of the warrants in question which purport to be under the first alternative of S.96(1) of the Criminal Procedure Code.”

The said view has been reiterated in several decisions of the Hon'ble Supreme Court.

At the same time, power of search and seizure affects not only right of possession and enjoyment of property but also privacy of a citizen. It

also affects right of personal liberty under Article 21 of the Constitution. Procedure for affecting such a right itself has to be fair and reasonable, as held by the Hon'ble Supreme Court in **Maneka Gandhi v. Union of India**, AIR 1978 SC 597. Referring to this aspect, in a recent decision in **District Registrar and Collector, Hyderabad and another v. Canara Bank etc.**, AIR 2005 SC 186, it was observed in para 55:-

“55. In Smt.Maneka Gandhi v. Union of India and another (1978) 1 SCC 248 – a 7-Judges Bench decision, P.N.Bhagwati,J. (as His Lordship then was) held that the expression 'personal liberty' in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status distinguishing as fundamental rights and give additional protection under Article 19 (Emphasis supplied). Any law interfering with personal liberty of a person must satisfy a triple test : (i) it must prescribe a procedure (ii) the procedure must withstand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation; and (iii) it must also be liable to be tested with reference to Article 14. As the test propounded by Article 14 pervades Article 21 as well, the law and procedure authorizing interference with personal liberty and right of privacy must also be right and just and fair and not arbitrary, fanciful or oppressive. If the procedure prescribed does not satisfy the requirement of Article 14 it would be no procedure at all within the meaning of Article 21.”

In the same decision, issue of right of privacy, has also been dealt with in paras 17 to 39. In the said decision, development in law after judgment of Hon'ble the Supreme Court in **M.P.Sharma** (supra) has also been discussed, particularly in the light of subsequent judgments in **Kharak Singh v. State of UP**, AIR 1963 SC 1295 and **Govind v. State of MP**, AIR 1975 SC 1378 and it was concluded that right of the State has to be exercised on reasonable basis or on reasonable material. . It was further observed in para 33 of judgment in **Canara Bank** (supra) :

“33. Intrusion into privacy may be by – (1) legislative provisions, (2) administrative/executive orders, and (3) judicial orders. The legislative intrusions must be tested

on the touchstone of reasonableness as guaranteed by the Constitution and for that purpose the court can go into the proportionality of the intrusion vis-a-vis the purpose sought to be achieved. (2) So far as administrative or executive action is concerned, it has again to be reasonable having regard to the facts and circumstances of the case. (3) As to judicial warrants, the court must have sufficient reason to believe that the search or seizure is warranted and it must keep in mind the extent of search or seizure necessary for the protection of the particular State interest. In addition, as stated earlier, common law recognized rare exceptions such as where warrantless searches could be conducted but these must be in good faith, intended to preserve evidence or intended to prevent sudden danger to person or property.” (Underlining supplied).

In Nikhata Afros's case (supra), following direction was given by the Madhya Pradesh High Court:-

- “7. Therefore, the Transport Commissioner, Gwalior or the State Govt. should issue a circular to all such authorities that as and when they seize the vehicle and any of the persons contests the matter that he is not guilty of any breach of the condition of the provision of the Act, then he should not be forced to come for compounding. Instead of seizing the vehicle, the authorities may seize the registration certificate and give an acknowledgment to this effect. That will be a sufficient check for production of the vehicle and bringing such persons to book. The seizing of a stage carriage or tourist vehicle at dead of night and then forcing the owner to compound when he genuinely feels that he has not committed any breach will not amount to acting in lawful manner. Therefore, let a general circular may be issued by the State Govt. To all the authorities that as and when any permit holder contests that he has not committed a breach, in that case, his vehicle should not be seized, but his registration certificate may be seized and an acknowledgment to this effect may be given so that he may have a right to approach the proper Court for redressal of his grievance.”

The said direction was, however, modified by the Hon'ble Supreme Court in its order dated 7.10.1996 in State of MP and others v. Nikhata Afros and others, SLP(C) CC 5259/1996 arising out of the said order of the High

Court, to the following effect:-

“The grievance of the State is that the direction given by the High Court in paragraph 7 of the judgment runs counter to Section 207 of the Motor Vehicles Act, 1988. According to Section 207, it is submitted, there is a discretion in the appropriate authority either to seize the vehicles or to seize the certificate of registration instead of seizing the vehicle. The submission of the learned Advocate General for the State of M.P. is that the High Court has now directed issuance of a general Circular that no vehicle be seized and that in all cases only registration certificate shall be seized and acknowledgment given.

We do not understand the direction in such absolute terms. The instructions that may be issued by the State may provide for such exceptional cases in which it may be necessary to seize the vehicle but as a normal rule the seizure shall be of registration certificate only.”

Reliance has also been placed on judgment of the Hon'ble Supreme Court in **State of Maharashtra and others v. Nanded Parbhani Z.L.B.M.V Operator Sangh**, (2000) 2 SCC 69, wherein it was laid down that power to detain vehicle has to be exercised cautiously and such a power could not be exercised merely where number of passengers carried was more than the number of passengers permitted but only when there is violation of condition “relating to the route on which or the area in which or the purpose for which the vehicle may be used”.

In view of the above, we are of the view that while conferment of power has to be upheld, such power has to be exercised reasonably and for the purpose for which the said power has been conferred. Such power could not be exercised merely on the ground that number of passengers in the vehicle were more than the passengers permitted, as held by the Hon'ble Supreme Court in **Nanded Parbhani's** case (supra).

As regards exercise of power, we are of the view that no direction in absolute terms for exercise of such power can be issued by this Court, as held by the Hon'ble Supreme Court in **State of MP v. Nikhata Afros's** case (supra) and in **Sushil Kumar Sharma's** case (supra). This is a matter which ought to be gone into by the State Transport authority having regard to the object of law conferring such power and keeping in view the

fact that no harassment is caused to general public.

Learned counsel for the State pointed out that under Rule 226 (6), a provision was incorporated that all Class I officers mentioned in Rule 226(6) were given the powers to release a vehicle and where power of seizing or detaining a vehicle was exercised by an officer below the rank of District Transport Officer, a report is required to be sent alongwith relevant documents to the District Transport Officer concerned who may release the vehicle in accordance with section 207(2). At this stage, it may be premature to make any observations on possible misuse of power and inadequacy of check incorporated under Rule 226(6) to check such an abuse.

We are also unable to hold that in every case where violation is alleged, 24 hours notice must be given before taking action of impounding a vehicle, as suggested by the learned counsel for the petitioners and as provided in the interim order.

Let the matter be looked into by the respective State Transport Commissioners and such directions be issued as may be considered necessary for reasonable exercise of power under Section 207 of the Act within three months from the date of receipt of a copy of this judgment. The petitioners are given liberty to make appropriate representation or suggestions to the State Transport Commissioner. Till such exercise is undertaken, interim order granted by this Court will continue. On appropriate directions being issued, the interim order will cease to operate.

The writ petition is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

October 27, 2006
'gs'

(Rajesh Bindal)
Judge

